

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Collective Investment Management, Ltd.,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1220
Parcel No. 311/00013-044-004

Docket No. 09-77-1221
Parcel No. 311/00305-421-000

Docket No. 09-77-1222
Parcel No. 311/00305-422-000

Docket No. 09-77-1223
Parcel No. 311/00305-750-001

Docket No. 09-77-1224
Parcel No. 311/00305-750-002

Docket No. 09-77-1225
Parcel No. 311/00305-750-003

Docket No. 09-77-1226
Parcel No. 311/00305-750-004

Docket No. 09-77-1227
Parcel No. 311/00305-750-005

Docket No. 09-77-1228
Parcel No. 311/00305-750-007

Docket No. 09-77-1229
Parcel No. 311/00305-750-008

Docket No. 09-77-1230
Parcel No. 311/00305-750-009

Docket No. 09-77-1231
Parcel No. 311/00305-750-010

On April 30, 2010, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Collective Investment

Management, Ltd., was represented by Christopher T. Langpaul of LaMarca & Landry, PC, Clive, Iowa, and submitted evidence in support of its petition. The Polk County Board of Review designated Assistant County Attorney David Hibbard as its legal representative and submitted evidence in support of its decision. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Collective Investment Management, Ltd. (Collective Investment) is the owner of properties located at 5601 Enterprise Drive, Grimes, Iowa. The property includes Lots 1 through 5 and 7 through 10, Lot 21 and 22, and an L-shaped Lot. All lots have access off Southwest 37th Street. Lots 1 through 5 and 7 through 10, and the L-shaped Lot are located in the Interstate Gateway Business Park. Lots 21 and 22 are located in the Gateway Business Park.

Collective Investment protested to the Board of Review on the ground that the properties are assessed for more than authorized by law under Iowa Code section 441.37(1)(b); and that there had been a downward change in value since the last assessment under sections 441.37(1) and 441.35(3). In response to the protest, the Board of Review notified Collective Investment the January 1, 2009, assessment would not be changed. Collective Investment then filed an appeal with this Board on the same grounds. In a re-assessment year, a challenge is based on downward change in value is akin to a market value claim. *See Dedham Co-op Ass'n. v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

Collective Investment appeals only the land value on Lot 21 and not the improvement value. The remaining parcels are all vacant parcels of land. The following is a breakdown of the current assessed value and the value Collective Investment contends is the correct assessment of the parcels:

Docket No.	Parcel	Acres	Lot Reference	BoR Land	BoR Impr.	BoR Total	Appellant Land	Appellant Bldg.	Appellant Total
09-77-1220	311/00013-044-004	19.03	L-shaped Lot	\$730,800	\$ -	\$ 730,800	\$325,151.75	\$ -	\$325,151.75
09-77-1221	311/00305-421-000	4.622	Lot 21	\$351,000	\$1,570,000	\$1,921,000	\$109,108.80	\$1,570,000	\$1,679,108.80
09-77-1222	311/00305-422-000	4.888	Lot 22	\$371,200	\$ -	\$ 371,200	\$170,366.80	\$ -	\$170,366.80
09-77-1223	311/00305-750-001	3.468	Lot 1	\$303,600	\$ -	\$ 303,600	\$120,852.80	\$ -	\$120,852.80
09-77-1224	311/00305-750-002	2.883	Lot 2	\$252,400	\$ -	\$ 252,400	\$100,466.40	\$ -	\$100,466.40
09-77-1225	311/00305-750-003	2.746	Lot 3	\$240,400	\$ -	\$ 240,400	\$95,692.80	\$ -	\$ 95,692.80
09-77-1226	311/00305-750-004	3.025	Lot 4	\$264,900	\$ -	\$ 264,900	\$105,415.20	\$ -	\$105,415.20
09-77-1227	311/00305-750-005	5.905	Lot 5	\$415,500	\$ -	\$ 415,500	\$154,333.20	\$ -	\$154,333.20
09-77-1228	311/00305-750-007	3.131	Lot 7	\$238,100	\$ -	\$ 238,100	\$109,108.80	\$ -	\$109,108.80
09-77-1229	311/00305-750-008	2.399	Lot 8	\$182,400	\$ -	\$ 182,400	\$83,600.00	\$ -	\$83,600.00
09-77-1230	311/00305-750-009	2.426	Lot 9	\$184,500	\$ -	\$ 184,500	\$84,541.60	\$ -	\$84,541.60
09-77-1231	311/00305-750-010	2.366	Lot 10	\$207,200	\$ -	\$ 207,200	\$82,450.40	\$ -	\$82,450.40

Steve Gillotti, president and principal stockholder of Collective Investment, testified he is responsible for the day-to-day operations. He generally testified regarding the properties' easement and access issues. Gillotti testified to restrictions for the rear lots (Lots 21 and 22) because of road access, limited visibility, and restrictions to the land for drainage and overhead power lines that, in his opinion, limit the market for the lots.

Gillotti also testified that Collective Investment has attempted to sell Lot 5 and has had only two offers to purchase. Both offers came from the same party. He stated the original offer was way below his asking price, coming in at \$190,000. After counter offers, the parties agreed to a purchase price of \$199,000. This sale was not completed. Nearly a year later, and just prior to the hearing in this case, another offer was made by the same party to the prior failed transaction, this time for \$85,000 for Lot 5. We note Lot 5 is assessed at \$415,500, and the appellant requested that Lot 5 be assessed at \$154,333. Gillotti testified that he set the asking price higher on all the parcels so he would have plenty of room to negotiate the sales price. Essentially, Gillotti believes that a listing price represents a starting point for negotiations, rather than the true market value of a property.

Finally, Gillotti noted that part of Collective Investment's opinion of market value of these properties is based on a sale of a portion of the L-shaped lot to the Rasmussen Group, which occurred

prior to the assessment date. In Gilotti's opinion, this was an arm's-length transaction and both parties agreed to the land allocation amount. The sale of that property was part of a larger transaction that included the purchase of other properties in the area.

William Corwin, an independent CPA who does work for Collective Investment, also testified regarding the sale to the Rasmussen Group. Corwin stated he reviewed the allocation of the sales to the Rasmussen Group and based on his review of the sale, he did not detect anything unusual about the allocations. Corwin also discussed the pros and cons that the buyer and seller face during the allocation process. Although we find this information informative, it has little value to the issue at hand. We note no documents were provided regarding the Rasmussen Group transaction, and while it may be a basis for Collective Investment's conclusions of value, we cannot reach any conclusion regarding the comparability of this sale to the subject properties.

Mike Olson of The Olson Group, Urbandale, Iowa, completed three appraisals of the properties on appeal. Olson appraised all of the properties using the sales comparison approach.

For the L-shaped Lot, Olson used three comparable sales in the Grimes area. The sales were located at the northwest corner of 114th Street and S 19th Street, Grimes; 1255 SW Brookside Circle, Grimes; and Outlot Z of the Grimes Industrial Park on SW Brookside Drive, Grimes. They are all within several miles of the subject property. After adjustments, the sales ranged from \$0.36 to \$0.60 per square foot. The median was \$0.42 per square foot. Olsen made no adjustments for date, time or zoning, but he did make adjustments for location, size, topography, and shape. Based on his adjustments he concluded a value of \$375,000, as of January 1, 2009, for the L-shaped Lot.

For Lots 21 and 22, Olson again used three comparable sales in the Grimes area, two of which were different from those used in his appraisal of the L-shaped Lot. The properties were located at 5500 SW Brookside Drive, Grimes; 1255 SW Brookside Circle, Grimes; and 1400 SE 11th Street, Grimes. Again, these properties are all within several miles of the subject property. His adjusted sales

price per square foot ranged from \$1.22 to \$1.39. His adjustments, and non-adjustments, were similar to those in the appraisal of the L-shaped Lot. Olson appraised Lot 21 at \$270,000 and Lot 22 at \$290,000.

Olson's third, and final, appraisal valued Lots 1 through 5 and 7 through 10. For this appraisal, Olson again used the same properties as in his appraisal of Lots 21 and 22. His adjustments of these sales were different than the appraisal for Lots 21 and 22 to reflect the differences in Lots 1 through 5 and 7 through 10 as they compared to the selected sales. While Olson also submitted evidence that discounted the nine lots if sold as a package, he first arrived at a conclusion of value for each of the lots individually, as set forth in the chart below. Further, we note that while a discounted value may be useful for lending purposes, it has little relevance for assessment purposes because it discounts the value based on single ownership. Therefore, we consider only the appraised values of the individual lots, not the discounted value. But we do not believe Olson's appraisal should be discredited simply because he took the appraisal a step further than necessary and determined a discounted value.

Following is a chart of the values Olson arrived at for all of Collective Investments' properties.

Docket No.	Parcel	Acres	Lot Reference	BoR Land Values	Olson's Land Values
09-77-1220	311/00013-044-004	19.03	L-shaped Lot	\$730,800	\$375,000
09-77-1221	311/00305-421-000	4.622	Lot 21	\$351,000	\$270,000
09-77-1222	311/00305-422-000	4.888	Lot 22	\$371,200	\$290,000
09-77-1223	311/00305-750-001	3.468	Lot 1	\$303,600	\$242,000
09-77-1224	311/00305-750-002	2.883	Lot 2	\$252,400	\$201,000
09-77-1225	311/00305-750-003	2.746	Lot 3	\$240,400	\$191,000
09-77-1226	311/00305-750-004	3.025	Lot 4	\$264,900	\$211,000
09-77-1227	311/00305-750-005	5.905	Lot 5	\$415,500	\$257,000
09-77-1228	311/00305-750-007	3.131	Lot 7	\$238,100	\$218,000
09-77-1229	311/00305-750-008	2.399	Lot 8	\$182,400	\$167,000
09-77-1230	311/00305-750-009	2.426	Lot 9	\$184,500	\$169,000
09-77-1231	311/00305-750-010	2.366	Lot 10	\$207,200	\$165,000

Olson also testified regarding the limited use of the north portion of the L-shaped Lot and of Lot 5 due to overhead power lines. He believes this encumbrance limits the use of the property, particularly regarding building height limits and makes the properties only usable for certain types of

storage. The Board of Review questioned some of the land sales used by Olson, claiming that certain comparable properties also have the same overhead power lines as the subject property and that Olson still made adjustments to the subject properties. Although the lines may exist, no evidence was submitted to determine to what extent the lines limit the use of the land on the comparable properties, including the lines' locations on the properties, their height, and other issues regarding the lines. For this reason, we do not reject Olson's conclusions.

Additionally, Olson testified that, in his opinion, the east side of Highway 141 is far superior to the west side, where the subject properties are located. Several times he commented that the comparable sales were located on the "Gateway to Johnston" or the "Gateway to Grimes," whereas the subject properties did not benefit from such a location.

The Board of Review also attempted to discredit Olson regarding his opinion of the subject properties' location versus the comparable sales locations. It suggested that because Olson's comments regarding the undesirable location of the subject properties versus the desirable location of the comparables were not in his appraisal, he just came up with the theory at hearing. Olson responded by providing his typed notes, which he created in preparation for the hearing and provided to Collective Investment's attorney, to prove he did not just make up the testimony on the spot. The Board of Review requested to read the notes and attempted to submit the notes to this Board as Exhibit E. Collective Investment objected to having the notes entered as evidence claiming attorney work product. We reserved ruling on the objection. While a document prepared in anticipation of litigation for another party or that party's representative may be covered by attorney work product, these typically involve some type of mental impression of the attorney to be present. *Keefe v. Bernard*, 774 N.W.2d 663, 674 (Iowa 2009). Typically, mental impressions of an expert are admissible in civil proceedings. Iowa R. Civ. P. 1.508. In this administrative proceeding, the rules of privilege apply. Iowa Code § 17A.14(1). The document in question was prepared by Olson, an expert expected to be

called at hearing, and apparently sent to Collective Investment's attorney; additionally, we note that Olson read a majority of the information contained in the document into the record. Because this document was prepared by Olson and contains his mental impressions, not Collective Investment's attorney's impressions, and because it was substantially read into the record, Exhibit E will be admitted as part of the record. Additionally, we find that although Olson's appraisal may lack the information regarding his opinion of the market for the subject location, his notes clearly support his testimony and indicate these beliefs were developed as part of his appraisal process.

Olson's appraisal used only land sales in the Grimes area, and he believes that Gateway Park is considered an industrial park, not commercial, even though zoning may allow commercial use. Olson also pointed out that the property to the north with flex-mix buildings is 70% vacant, indicating there is not a high demand for these properties. Olson believes the sales in the Grimes Industrial Park support his opinion of value. Olson testified he only used three sales for each of the appraisals because he believed quality sales were more important than having a quantity of sales. He also stated that he carefully considers the amount of adjustment to each sale when determining how comparable the properties actually are. He stated he would never use a sale that requires 100% adjustment to make it comparable to a property being appraised. The adjustments Olson made to properties appear to be reasonable based on his testimony of the subject property and comparable sales.

We find Olson's demeanor was honest and sincere. His testimony was credible, as was his appraisal. He answered cross-examination questions without becoming defensive, he admitted to minor flaws in his appraisal, such as typographical errors, and he appeared to have a firm understanding of the influences affecting the market of the subject properties compared to other sales throughout the metro area.

Patrick J. Schulte, Commercial Appraisers of Iowa, Inc., submitted three appraisals on behalf of the Board of Review. Schulte appraised all of the properties using the sales comparison approach.

Schulte appraised the L-shaped Lot using eight sales: 6200 Highway 141, Grimes; 5700 SW Brookside Drive, Grimes; 1347 East Euclid Avenue, Des Moines; 13635 SW Brookside Circle, Grimes; 1205 SW 37th Street, Grimes; 5450 SW Brookside Drive, Grimes; 4000 121st Street, Urbandale; and 2095 NE 60th Avenue, Des Moines. We note the parcel size of these sales ranges from 146,274 square feet (0.853 acres) to 1,009,067 square feet (23.165 acres), and the L-shaped Lot is 824,692 square feet (18.93 acres). Schulte made only a maximum 15% adjustment to the size of any of the parcels. We also note the Schulte appraisal indicates he adjusted all but one sale of the Grimes properties for inferior location, meaning he found the location of the subject property to be superior to the comparable sales. This appears to be in direct contradiction to Olson's testimony regarding the sales in Grimes, as he indicated the subject properties' location was inferior to the Grimes sales he used; and we believe Olson's testimony over Schulte's for reasons explained herein. Ultimately, Schulte arrived at a value conclusion of \$620,000 for the L-shaped Lot as of January 1, 2009.

Schulte did not appraise Lot 21. No explanation was given why Schulte did not appraise Lot 21 and no additional evidence was presented at hearing to support the Board of Review's value.

Schulte also appraised Lot 22 individually. Schulte used seven sales to arrive at a conclusion of value for this parcel, some of which were the same as those used in his appraisal of the L-shaped Lot: 6200 Highway 141, Grimes; 5500 SW Brookside Drive, Grimes; 13635 SW Brookside Circle, Grimes; 1205 SW 37th Street, Grimes; 5450 SW Brookside Drive, Grimes; 4000 121st Street, Urbandale; and 2095 NE 60th Avenue, Des Moines. In this case, Schulte again made positive adjustments to the properties located in Grimes. He also made a positive site size adjustment to three properties that are significantly larger than the subject. He ultimately concluded a value of \$210,000.

Finally, Schulte appraised Lots 1 through 5 and 7 through 10 individually based on several different combinations of eleven different sales: 4520 NW Urbandale Drive, Urbandale; 3605 SE Mische, Grimes; 1830 SE Princeton, Grimes; 1300 Hickman Road, Waukee; 1410 SW Tradition Drive,

Ankeny; 10303 NW 62nd, Johnston; 8700 Crescent Chase, Johnston; 8850 NW 62nd, Johnston; 5500 SW Brookside Drive, Grimes; 1205 SW 37th Street, Grimes; and 5450 SW Brookside Drive, Grimes. The properties showed a wide range of adjustments to make them comparable to the subject properties. A concern of this Board is the fact that Schulte used land sales from Waukee and Ankeny and, in fact, made an adjustment of 100% for sales in Grimes, which were closest to the subject property. Schulte arrived at individual values for the parcels as follows:

Docket No.	Parcel	Acres	Lot Reference	BoR Land Values	Schulte's Land Values
09-77-1220	311/00013-044-004	19.03	L-shaped Lot	\$730,800	\$620,000
09-77-1221	311/00305-421-000	4.622	Lot 21	\$351,000	\$--
09-77-1222	311/00305-422-000	4.888	Lot 22	\$371,200	\$210,000
09-77-1223	311/00305-750-001	3.468	Lot 1	\$303,600	\$830,000
09-77-1224	311/00305-750-002	2.883	Lot 2	\$252,400	\$570,000
09-77-1225	311/00305-750-003	2.746	Lot 3	\$240,400	\$420,000
09-77-1226	311/00305-750-004	3.025	Lot 4	\$264,900	\$460,000
09-77-1227	311/00305-750-005	5.905	Lot 5	\$415,500	\$510,000
09-77-1228	311/00305-750-007	3.131	Lot 7	\$238,100	\$270,000
09-77-1229	311/00305-750-008	2.399	Lot 8	\$182,400	\$210,000
09-77-1230	311/00305-750-009	2.426	Lot 9	\$184,500	\$210,000
09-77-1231	311/00305-750-010	2.366	Lot 10	\$207,200	\$310,000

Although Schulte spoke at length about his appraisal and appraising generally, he was unable to give a clear explanation for adjustments and selection of data. Rather, he referred to general appraisal techniques and theory, as well as general market principles. He continuously gave hypotheticals that had no foundation other than his general "knowledge" of the area and from appraising what seemed to be just one or two nearby properties. Schulte also testified that appraiser Levi Freedman and his staff worked on the appraisal. Based on Schulte's own statements, such as "we did this" and "we did that," appears to this Board that he came to testify, but may not have performed the larger portion of the appraisals.

Ultimately, we must question Schulte's opinion of value for Lot 1 which was \$830,000 or \$5.50 per square foot. This compares to the current assessed value of \$2.00 per square foot and \$1.60 per square foot by appraiser Olson. Schulte's reasoning for the vast discrepancy between his value and

the current assessment was that he could more closely examine the property and comparable sales, and perhaps the assessor does not have the time to do so. We do not find this statement reliable, and we note the sales information may have come from the assessor's own records.

Collective Investment offered to stipulate to Schulte's value for Lot 22. However, the Board of Review did not respond.

Schulte made several comparisons to the asking price set by Collective Investment versus his appraised value in his reports. As Gillotti testified, it is customary that the asking price will be higher than the actual sale price most of the time, as was the case in the offer to purchase Lot 5. However, on Lot 5, Schulte has a list price of \$1.50 per square foot, but values the lot at \$2.00 per square foot.

We also question Schulte's credibility resulting from a question raised about whether the appraisers used the IOWA REAL PROPERTY APPRAISAL MANUAL (MANUAL). The Board of Review asked Olson if he used the MANUAL, and Olson responded he did not. When this Board asked Schulte if he used the MANUAL, Schulte responded that he did. But we note Schulte did not do a cost approach to value. When asked how he could use the MANUAL without doing a cost approach, Schulte responded that the MANUAL was used for guidelines and definitions, such as supply and demand. We note the MANUAL lacks the information Schulte claims to have used, and we do not believe Schulte was truthful with these statements.

Both appraisers have the qualifications to perform this appraisal task. This Board must weigh the evidence and testimony to determine whether the record, when viewed as a whole, supports the claim that the properties are over-assessed. Both appraisers used the sales comparison approach to value. The income and cost approaches are not appropriate methods of valuation because the properties are vacant land. Olson focused on three sales for each of the properties. Each of the sales were within miles of the subject properties and reasonable adjustments were made. Schulte used some of these same sales in his analysis with different adjustments; but he also included an additional four or

five sales to value the properties. As previously noted, we do not find the comparable properties outside of the Grimes area that Schulte used to be persuasive evidence of the subject properties' market values because of the significant adjustments made to those sales. While one could assume that more sales would equate to a more accurate value, in this case we reject that assumption. If larger adjustments are required to make sales comparable to the subject properties, this limits the reliability of the sales for comparison purposes. In this case, the quality of the sale is more influential than the quantity of sales. Further, of the remaining properties, which were also used by Olson, we find Olson's testimony regarding the characteristics of those sales as compared to the subject property to be more persuasive. We find his statements regarding the traffic corridors to be persuasive. Overall, we find the appraisal and the testimony by Olson to be the most accurate and credible data to support the claim that the assessment is incorrect and to determine what the correct assessment should be. Further, we question the reliability of Schulte's appraisals because of his significant adjustments to some of the sale properties; additionally, we base this determination, in part, on his demeanor and testimony as previously discussed. Schulte became argumentative at times and rather than answer questions concisely, appeared to hedge his conclusions in general theories and principles.

Reviewing all the evidence, we find a preponderance of the evidence proves the subject properties were assessed for more than authorized by law as of January 1, 2009. Further, we find the Olson appraisals submitted by Collective Management supports the following assessments:

Docket No.	Parcel	Lot Reference	BoR Values	Olson's Values
09-77-1220	311/00013-044-004	L-shaped Lot	\$730,800	\$375,000
09-77-1221	311/00305-421-000	Lot 21	\$1,921,000	\$1,840,000
09-77-1222	311/00305-422-000	Lot 22	\$371,200	\$290,000
09-77-1223	311/00305-750-001	Lot 1	\$303,600	\$242,000
09-77-1224	311/00305-750-002	Lot 2	\$252,400	\$201,000
09-77-1225	311/00305-750-003	Lot 3	\$240,400	\$191,000
09-77-1226	311/00305-750-004	Lot 4	\$264,900	\$211,000
09-77-1227	311/00305-750-005	Lot 5	\$415,500	\$257,000
09-77-1228	311/00305-750-007	Lot 7	\$238,100	\$218,000
09-77-1229	311/00305-750-008	Lot 8	\$182,400	\$167,000
09-77-1230	311/00305-750-009	Lot 9	\$184,500	\$169,000
09-77-1231	311/00305-750-010	Lot 10	\$207,200	\$165,000

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. 441.21(2). If sales are not available or market value "cannot be readily established in that manner,"

“other factors” may be considered in arriving at market value. *Heritage Cablevision v. Bd. of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). The assessed value of the property “shall be one hundred percent of its actual value.” 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekoloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). This Board is “free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value” *Heritage Cablevision*, 457 N.W.2d at 598.

If a taxpayer “offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden shifts to the board of review to uphold the assessed value.” *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citations omitted). Even if the taxpayer does not shift the burden, he may still prevail. *Id.* In this case, Collective Investment presented three witnesses: Gillotti, Corwin, and Olson. Gillotti, however, was not disinterested as he is the president and primary shareholder of the Company. See *Post-Newsweek Cable, Inc. v. Bd. of Review*, 497 N.W.2d 810, 813 (Iowa 1993) (defining a “disinterested witness” as “[o]ne who has no right, claim, title, or legal share in the cause or matter in issue”). That leaves Collective Investment with two witnesses. In order for these two witnesses to shift the burden, they must have presented “competent evidence,” which has been interpreted to require that their testimony “must comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782 (quoting *Boekoloo*, 529 N.W.2d at 279). In this case, Corwin did not give any evidence as to the value of the properties. Rather, his testimony centered upon the Rasmussen Group transaction, its valuation allocation, and whether it was a normal transaction. He did not offer an independent value opinion using the sales approach method, or any other method, for Collective Investment’s properties. For this reason, his testimony did not help shift the burden of proof

under Iowa Code section 441.21(3). Because Olson was Collective Investment's only disinterested witness that offered evidence of the market value of the subject properties, the burden of proof remained with it to show the property was over-assessed and establish what the correct assessment should be. In this case, we find Collective Investment met that burden by a preponderance of the evidence when viewing the record as a whole.

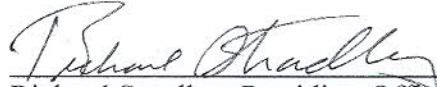
The appraisal commissioned for Collective Investment by Mr. Olson is the best indicator of the market value of the subject property. The evidence presented supports Collective Investment Management, Ltd.'s claim that the property is assessed for more than authorized by law. We, therefore, modify the assessment of the property as determined by the Polk County Board of Review as of January 1, 2009.

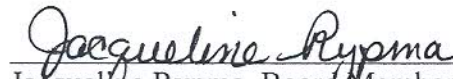
THE APPEAL BOARD ORDERS that the assessed value of the property at 5601 Enterprise Drive, Grimes, Iowa, January 1, 2009, assessment is as follows:

Docket No.	Parcel	Assessed Value
09-77-1220	311/00013-044-004	\$375,000
09-77-1221	311/00305-421-000	\$1,840,000
09-77-1222	311/00305-422-000	\$290,000
09-77-1223	311/00305-750-001	\$242,000
09-77-1224	311/00305-750-002	\$201,000
09-77-1225	311/00305-750-003	\$191,000
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09-77-1227	311/00305-750-005	\$257,000
09-77-1228	311/00305-750-007	\$218,000
09-77-1229	311/00305-750-008	\$167,000
09-77-1230	311/00305-750-009	\$169,000
09-77-1231	311/00305-750-010	\$165,000

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 30 day of June, 2010.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member

Copies to:

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Clive, IA 50325
ATTORNEY FOR APPELLANT

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Polk County Attorney's Office
111 Court Avenue, Room 340
Des Moines, IA 50309

Jamie Fitzgerald
Polk County Auditor
111 Court Avenue
Des Moines, IA 50309

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6 - 30</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	